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The Comprehensibility of Plain Language and Non Plain Language Minnesota Civil Jury Instructions

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THE COMPREHENSIBILITY OF

PLAIN LANGUAGE AND NON PLAIN LANGUAGE

MINNESOTA CIVIL JURY INSTRUCTIONS

by

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This thesis, submitted by Kathryn J. Apostal in partial fulfillment of the requirements for the Degree of Master of Arts from the University of North Dakota, has been read by the Faculty Advisory Committee under whom the work has been done and is hereby approved.

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This thesis meets the standards for appearance, conforms to the style and format requirements of the Graduate School of the University of North Dakota, and is hereby approved.

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ABSTRACT

A substantial volume of research (e.g., Charrow & Charrow, 1979; Elwork, Sales, & Alfini, 1977, 1982) suggests that jurors do not understand the often-convoluted language of standard jury instructions. Some states have recently simplified their instructions, but others continue to debate whether change is beneficial. This study was designed to investigate whether "plain language" jury instructions lead to improved comprehension. College students listened to either new, plain language Minnesota jury instructions or older Minnesota jury instructions addressing the same topics. Participants then took a written comprehension test covering legal rules contained in the instructions. Participants also completed a Nelson-Denny vocabulary test (Brown, Bennett, & Hanna, 1981) and provided demographic information. No significant treatment group differences were found for overall comprehension scores. Vocabulary scores were significantly correlated with comprehension scores for both groups of subjects. The results suggest that a juror's verbal proficiency is more important in predicting comprehension of jury instructions than the language style of the instructions. Also, response patterns for some items suggest that people often maintain preconceived notions of legal rules despite clear instruction to the contrary.

CHAPTER I

INTRODUCTION

The past few decades have seen a call for greater accountability of public and private institutions, including government, professions, and private business, along with a corresponding recognition of citizens' "right to understand" (Danet, 1990). These concerns have given rise to the "plain English" or "plain language" movement with respect to legal documents (Charrow & Charrow, 1979; Elwork, Sales & Alfini, 1982). Redish (1985) offers this definition of plain English:

> Plain English means writing that is straightforward, that reads as if it were spoken. It means writing that is unadorned with archaic, multisyllabic words and majestic turns of phrase that even educated readers cannot understand. Plain English is clear, direct, and simple. (p. 125)

Numerous state and federal laws now require that warranties, consumer contracts, insurance policies and loan agreements be written in language understandable to the average person (e.g., Minn. Stat. Ann. sec. 325G.31 (Minnesota plain language contract act); 15 U.S.C. sec. 2302 (1996) (Magnuson-Moss warranty act)). (For a discussion of such legislation, see Charrow and Charrow, 1979, and Park and Harvey, 1985.) The simplification of wording and sentence structure in bank loans, sales agreements and mortgages has lead to improved comprehension in experimental settings (Masson & Waldron, 1994).

The Nature of Jury Instructions

One critical setting in which legal language should be understandable to laypersons is the courtroom. Of particular concern is jury instructions — instructions on the law given by the judge to the jury during a trial. Several scholars (e.g., Elwork, et al., 1982) have charged that jurors' pervasive misunderstanding of jury instructions can lead to lawless verdicts.

In a jury trial, it is the jury's job to determine the facts, in other words, to sort out which parts of the competing stories presented at trial are the true ones, and to render a verdict by applying these factual decisions to the law (Elwork, et al., 1982).

It is judge's job to determine the law applicable to the case and instruct the jury accordingly. Instructions provided by the judge to the jury during the course of trial are referred to as jury instructions, or the "charge" to the jury. Usually instructions are presented in two parts. The judge reads preliminary instructions, covering general duties applicable during the course of trial, at the start of the trial. After all the evidence has been presented and the attorneys have made their closing arguments, the judge reads closing instructions, including the substantive law relating to the particular case at hand. The time required to present closing instructions can vary greatly, but twenty to thirty minutes is fairly typical (Meyer & Rosenberg, 1971).

The Importance of Comprehension

> The North Carolina Court of Appeals described the function of jury instructions:
>
> The chief purpose of the charge is to aid the jury in clearly understanding the case and in arriving at a correct verdict. If this is not done, there can be no assuranc

that the verdict represents a finding by the jury under the law and upon the evidence presented. (Warren v. Parks, 1977, 31 N.C.App. at p. 612; 230 S.E.2d at p. 687 (citations omitted))

If jurors don't understand the instructions, they may fall back on previous, often erroneous, notions of the law (Park, 1999). Ellsworth (1989) observed that mock jurors frequently deliberated about topics the judge had previously ruled to be irrelevant. She concluded that "juries rely at least as much on legal knowledge gained outside the courtroom as they are [sic] on the judge's instructions" (p. 221). Severance, Greene & Loftus (1984) noted that "if instructions are not understandable, verdicts will tend to be based on idiosyncratic features of the trial or personal attitudes of the jurors rather than on the proper legal standards" (p. 220).

Elwork, et al. (1982) identified features typical of juries that don't understand their instructions. The researchers presented participants with a videotaped automobile accident trial, followed by one of two different versions of jury instructions. Through comprehension tests, one version was identified as being less comprehensible than the other. The researchers found that the jurors receiving less comprehensible instructions exhibited several characteristics: (a) Deliberations were more likely to be dominated by one person or a few people claiming to have legal expertise, (b) the jury was more likely to discuss improper topics such as insurance in an injury case, and (c) jurors were more likely to reach incorrect verdicts ("incorrect" being defined as a verdict inconsistent with the jurors' conclusions about the facts). In other words, jurors receiving hard-to-understand instructions were incorrectly applying the law to the facts as they found them.

Generally, judges are prohibited from commenting on the evidence, or stating an opinion as to how the jury should render its verdict (Steele & Thornburg, 1988). Thus, judges are very reluctant to answer questions from jurors for fear that the answer might be viewed as a comment on the evidence. Accordingly, when juries ask for help interpreting the instructions, their questions are usually met with no comment, an admonition to review the instructions, or simply a re-reading of the relevant instructions by the judge in exactly the same wording as before (Severance & Loftus, 1982). This is of little help to jurors (Ellsworth, 1989). This pattern exists, notwithstanding that when jurors ask for help with the instructions, the trial judge is obligated to offer additional instruction or explanation that would guide the jury (Bollenbach v. United States, 1946; Wright v. United States, 1957).

The law generally prohibits inquiry into the method or reasoning by which a jury reaches its verdict (Meyer & Rosenberg (1971); Steele & Thornburg, 1988; see, e.g., Fed. R. Evid. 606(b)). Thus, most real-world juror misunderstanding is impossible to identify or confirm. A few jurisdictions, however, allow information about deliberations to become public. As a result, cases exist in which juror misunderstanding of legal issues is known to have affected the verdicts.

In Sellars v. United States (1979), the defendant was charged with the murder of an acquaintance. He plead not guilty, claiming self-defense. At the end of the evidence, the jury listened to an hour and a half of jury instructions and deliberated overnight. The jury found the defendant guilty of manslaughter, a lesser offense than the original charge of second degree murder. Shortly after the trial, while speaking among themselves,

several jurors realized that they had meant to find the defendant not guilty, but had misunderstood the instructions. They had mistakenly thought that if they accepted his self-defense claim, manslaughter was the appropriate verdict. Nevertheless, neither the trial judge nor the appellate court would allow the verdict to be changed. The conviction was affirmed. (See Elwork, et al., 1982, for background facts of this case.)

In 1982 Luis Marin was charged with intentionally setting a fire that killed twenty-six people. The prosecution argued that Marin had intended to set a small fire so he could emerge as a hero. Co-workers testified that Marin had disappeared from the site just before the fire began. All evidence against Marin was circumstantial. During the jury's deliberation, they asked the judge to clarify the meaning of "intent." Eventually, the jury found Marin guilty. The judge, however, overturned the verdict on the grounds that because the prosecution's case failed to negate other explanations for the fire, the evidence was insufficient to support a conviction (Severance, et al., 1984).

In Whited v. Powell (1956) some jurors mistakenly believed that liability required deliberate misconduct, and voted accordingly. The court held that this was "express misconstruction of the court's charge" (155 Tex. at p. 215; 285 S.W.2d at p. 364) but refused to order a new trial. The court reasoned that jury verdicts would be of little value if misunderstanding by jurors constituted grounds for a new trial.

In Compton v. Henrie (1963), one juror repeatedly told the rest of the jury that "preponderance of the evidence" was the same as "reasonable doubt," so that the defendant could not be found liable unless his "guilt" was proved beyond a reasonable doubt. The court held that the juror's statements amounted to "nothing more than a

misinterpretation of the court's charge; and were, consequently, not misconduct" (p. 184). The verdict was affirmed.

In Hoffman v. Deck Masters, Inc. (1983), the jury miscalculated damages because it misunderstood the jury instructions. Despite affidavits from eight jurors establishing that they failed to understand the charge, the court ruled that misconstruction of the charge did not justify a new trial. The verdict was allowed to stand.

These and numerous other cases illustrate the prevalence of juror misunderstanding of instructions and judicial reluctance to interfere or allow a new trial on that basis (Steele & Thornburg, 1988). It is apparent that miscomprehension of jury instructions has had an impact on verdicts in actual cases, both civil and criminal.

Pattern Instructions Developed

Error in instructing the jury is often cited as the single most frequent cause for appeal and reversal of a case (Sales, Elwork, & Alfini, 1977). Seemingly minor changes from established wording may result in reversal and the need for a retrial. For example, in People v. Garcia (1975), the California Court of Appeal discussed seven prior cases in which trial courts had attempted to explain "reasonable doubt" beyond the language established in an early case. Each attempt was ruled to be legally erroneous.

The conflict between legal precision and juror understanding has long frustrated jurists, as expressed by Jerome Frank seven decades ago:

> What a crop of subsidiary semi-myths and mythical practices the jury system yields! Time and money and lives are consumed in debating the precise words which the judge may address to the jury, although everyone who stops to see and

> think knows that these words might as well be spoken in a foreign language — that, indeed, for all the jury's understanding of them, they are spoken in a foreign language. Yet, every day, cases which have taken weeks to try are reversed by upper courts because a phrase or sentence, meaningless to the jury, has been included in, or omitted from the judge's charge. (Frank, 1930, p. 181)

Recognizing the importance of accurate jury instructions, and the difficult task of trial judges in formulating such instructions for each trial, most jurisdictions in the United States have developed pattern jury instructions. Pattern instructions are statements of the law written by committees of judges and lawyers for presentation to jurors at trial. Depending on the needs of the case, the trial judge selects the particular instructions for use at trial (Charrow & Charrow, 1979).

In drafting pattern instructions, priority has been given to creating legally accurate statements of the law, rather than creating comprehensible instructions. This priority is made clear by the following admonition found in an early version of jury instructions from California: "The one thing an instruction must do above all else is correctly state the law. This is true regardless of who is capable of understanding it" (California Jury Instructions — Criminal: Book of Approved Jury Instructions (BAJI) 44 (1950) (cited in Severance, et al., 1984)).

In an effort to be legally accurate in creating jury instructions, drafting committees often adopt language from statutes or case law: language written by and intended for use by judges and attorneys, not laypersons. And because jury instructions are intended to cover all cases, they often contain vague generalities or too-numerous specifics that impair

comprehension and apply poorly to any particular case (Severance, et al., 1984). It is not surprising, then, that numerous studies have found very low comprehension rates for material in pattern jury instructions.

Studies Testing Pattern Instructions

Using a mock trial scenario, Elwork, Sales, and Alfini (1977) found that the presentation of pattern Michigan negligence instructions resulted in no better understanding of the applicable law than the presentation of no instructions at all. The authors posited that the average juror may understand only half of the legal instructions presented by the judge (Elwork, et al., 1982).

Reifman, Gusick & Ellsworth (1992) compared former jurors with people who had been called for jury duty but who had not yet served. Each group was administered an objective test covering legal rules that the former jurors had heard at trial. The former jurors performed better than the non-jurors, but comprehension was still very low. The authors concluded that jurors understand less than half of the instructions they hear at trial.

In another study (Ellsworth, 1989) participants watched a videotaped mock homicide trial, received jury instructions, deliberated, and then filled out an objective test covering legal rules contained in the instructions. Ellsworth found that although participants spent over 20% of their deliberation time discussing the law, only about half of their law-related statements were correct, and one fifth were, according to Reifman, et al. (1992), "seriously in error" (p. 540). On the 18-item objective test, participants' average score was 11.7, not significantly different from random guessing.

O'Reilly (1976) sent a questionnaire to former jurors who had served on civil juries. The questionnaire included 10 multiple-choice items testing the definitions of basic legal concepts that should have been familiar to the jurors. Using 80% as a minimum passing score, O'Reilly found a 37% failure rate. The most problematic areas were the definitions of "preponderance of the evidence" (44% error rate), "admissible evidence" (32%), and "inference" (31%). The best-performing concepts were "weigh evidence" (8% error rate) and "evidence" (9%).

O'Mara and von Eckartsberg (1977) also surveyed former jurors. The researchers found that 76% of the respondents lacked a full understanding of their role as jurors, and 3% demonstrated a total lack of comprehension. Also, jurors tended to overestimate their level of comprehension: 83% were "quite certain" or "completely certain" of their responses, but significant misunderstanding was found for key legal concepts such as "legal cause" (32% error rate) and "ordinary care" (29%).

Forston (1975) presented a civil or criminal mock case to experienced former jurors, followed by a multiple-choice comprehension test of the jury instructions. He found that participants viewing the civil case scored only 46% correct prior to deliberation, and 60.1% after deliberation. Participants viewing the criminal case scored only 53.1% before deliberation, and 63.3% afterwards. A pilot study using college students had resulted in higher scores, but Forston warned that the former jurors, rather than the students, were more representative of actual jurors.

Strawn and Buchanan (1976) compared instructed and non-instructed participants in a mock burglary trial scenario. The instructed participants received pattern Florida jury

instructions. On a 40-item objective test, the instructed jurors barely outperformed the non-instructed jurors (30% vs. 40% error rate overall), and failed to show any improvement over non-instructed jurors on four out of nine important subject areas ("reasonable doubt," "information," "material allegation," and "breaking and entering"). In fact, the instructed jurors showed lower understanding on some items (including "demeanor" and "reasonable doubt"), indicating that pattern instructions were producing confusion, rather than comprehension.

In a similar study, Buchanan, Pryor, Taylor, and Strawn (1978) compared instructed and non-instructed participants using a comprehension test designed to assess their understanding of Florida pattern instructions on breaking and entering. The authors found that instructed participants generally performed better than non-instructed participants; however, the instructed group scored only 72% on overall comprehension and 40% on questions requiring the application of jury instructions to hypothetical trial situations. The researchers noted:

> The low rates of comprehension demonstrated in such areas as circumstantial evidence, presumption of innocence, reasonable doubt, witness credibility, witness demeanor, admissable [sic] evidence, and what constitutes an attempt to commit a crime are particularly distressing when one considers the possible ramifications in jury deliberations. When viewed in light of the possibility that a verdict may not be reached if just one juror fails to understand a portion of the instructions, the pervasive misunderstanding indicated by the data has serious implications for both the fairness and efficiency of our jury system. (p. 35)

Juror misunderstanding is widespread. Comprehension problems have been found for pattern instructions from California (Charrow & Charrow, 1979; Ellsworth, 1989), Michigan (Elwork, et al., 1977; Reifman, et al., 1992), Florida (Strawn & Buchanan, 1976; Buchanan, et al., 1978; Elwork, et al., 1982), Iowa (Forston, 1975), Nevada (Elwork, et al., 1982), District of Columbia (O'Reilly, 1976), Missouri (Wiener, Pritchard, & Weston, 1995), Pennsylvania (O'Mara & von Eckartsberg, 1977), Arizona (Elwork, et al., 1982), Washington (Severance, et al., 1984; Severance & Loftus, 1982), and Wyoming (Saxton, 1998).

Psycholinguistic Trouble Spots

In a landmark study, Charrow and Charrow (1979) tested comprehension of 14 pattern California jury instructions typically used in traffic accident cases. Each participant listened to a tape recording of a single jury instruction and then attempted to recite or paraphrase the instruction back to the experimenter. (This is referred to as a paraphrase task.) Responses were recorded and transcribed. In analyzing the results, the researchers broke down each instruction into its most important idea units. A participant received one point for each idea unit correctly recalled. Across all 14 instructions, participants correctly recited only about half (54%) of the important idea units.

Charrow and Charrow noted that the instructions contained numerous linguistic constructions that typically create comprehension difficulties. The authors also noted that participants' performance on these phrases was significantly lower than their overall performance, indicating that the participants were having particular difficulty understanding these phrases. Specifically, Charrow and Charrow identified the following

problematic linguistic constructions common to most jury instructions:

A. Nominalization. Nominalization occurs when a word that normally functions as a verb has been turned into a noun, for example, "the doing of" instead of "we do," or "the investigation of" instead of "we investigated." Nominalizations are more difficult for a reader or listener to process than the corresponding verb forms for at least two reasons. First, verb forms are believed to be more basic than most nouns, so that any procedure making a phrase less verb-like and more noun-like creates abstraction. Second, nominalization often removes the "doer" of the action, for example, changing the phrase "when you incorporate material..." into the phrase "the incorporation of material...", removes the subject "you." This makes the statement vague, impersonal, and hard to reconstruct.

B. The prepositional phrase "as to". The phrase "as to" is designed to connect two concepts, but the nature of the link is ambiguous. An example would be, "You must not speculate as to what the answer would have been." Charrow and Charrow noted that the phrase "as to" seems vague — not referring to time, location, or purpose — and thus, may serve as a signal to the listener that the subsequent material is unimportant. Charrow and Charrow recommended that in most situations, "as to" can be replaced with "about."

C. Misplaced phrases. Often jury instructions contain phrases that break up continuity or create ambiguity within a sentence due to their poor placement. For example, "If, in these instructions, any rule, direction or idea is repeated...." Charrow and Charrow noted that in most sentences, the word "if" is followed by the subject. Thus, many participants in the study paraphrased the quoted statement as "If these instructions

are repeated...." The authors recommended relocating prepositional phrases so that they do not break up clauses. In this example, the underlined clause might be relocated after the word "repeated."

D. "Whiz" deletion. Omission of relative pronouns that link clauses together in subordinate clauses (for example, "which is," "that is," "who are") often leads to miscomprehension. This phenomenon is referred to as "whiz" (short for "which is") deletion. For example, the phrase, "If you are convinced it is erroneous..." is confusing, requiring the listener to backtrack and fill in missing information. By contrast, the phrase, "If you are convinced that it is erroneous..." is much more clear.

E. Lexical items (vocabulary). One of the most common and obvious problems with jury instructions is the use of legal terms or uncommon words. Examples include words like deem, credibility, stipulate, and proximate cause. These create obvious comprehension problems for laypersons. Imwinkelried and Schwed (1987) admonished, "the draftsman should not view the task of writing an instruction as an excuse for displaying the extent of his technical vocabulary" (p. 138).

F. Multiple negatives. Examples of multiple negatives include, "not to avoid it," "without which the injury would not have occurred," "innocent misrecollection is not uncommon." Charrow and Charrow noted that negatives generally take longer to process and lead to more comprehension errors than positively worded equivalent phrases. With respect to the jury instructions under study, the researchers found that multiple negatives indeed lead to lower comprehension rates, although single negatives appeared to pose no problem.

G. Passive voice. Passive voice is characteristic of most legal language. Examples from jury instructions include, "no emphasis thereon is intended by me," or "the conduct reasonably could be avoided." These examples could be translated into active form: "I do not intend to emphasize..." or "the defendant could reasonably avoid the conduct." Charrow and Charrow found that passive phrases, in general, were reasonably well understood by participants. However, location was key: When passive phrases were located in subordinate clauses, comprehension was significantly impaired. An example is the following: "You must never speculate to be true any insinuation suggested by a question asked a witness" (p. 1326, fn53).

H. Word lists (redundancy). Often legal language contains unnecessarily redundant word strings, for example, "give, bequeath, and devise." Charrow and Charrow found that participants were more likely to remember at least one of the list items if shorter lists were used. Using multiple items to express a single idea was counterproductive; participants were less likely to remember any items on the list. Thus, the researchers recommended limiting word lists to no more than two items.

I. Discourse structure. Charrow and Charrow found several examples of poor organization, including the failure to group ideas logically, the presence of confusing redundancy, and the lack of introductory material. In addition to organizing material into meaningful groups, the authors recommended that drafters of jury instructions avoid repeating the same information in a different form without explaining that it constitutes the same ideas. For example, one jury instruction listed the elements of a claim in paragraph form, then proceeded to present the same elements, reworded, in list form. This left some

participants incorrectly believing that the second set of elements constituted new, even contradictory, information. Moreover, the authors recommended that before presenting a list of items, an introductory remark be given to advise the jurors how many items are coming. For example, "There are four things the plaintiff must prove: First, ..." This helps listeners remember the items or at least realize when their recollection is incomplete.

J. Embedded clauses. Embedded clauses involve the use of one or more subordinate clauses within one sentence. A particularly egregious example, containing three embeddings, is the following: "You must never speculate to be true any insinuation suggested by a question asked a witness." To minimize the mental gymnastics required by such a sentence, Charrow and Charrow advised that embedded clauses be avoided, particularly ones that include whiz deletions and passive voice (such as the example immediately above). Instead, simple sentences with normal subject-verb-object word order should be used.

K. Modals. Modals are a class of verbs, including "must," "may," "might," "should," "can," and "could," that communicate ability, obligation or permission. For example, "You must not be influenced by..." or "You should consider...." In contrast to most linguistic constructions discussed by Charrow and Charrow, modals were found to enhance comprehension. The authors speculated that jurors tune in to instructions that clearly tell them what to do.

Other recommendations. Elwork, et al. (1977 and 1982) identified other trouble spots often found in jury instructions and made the following recommendations:

1. Avoid uncommon words. For example, use the phrase "broke the law" instead

of "violated a statute." Both "violated" and "statute" are relatively uncommon terms.

2. Use parallel grammatical forms for lists (e.g., introducing each item of a list with the same word).

3. Use concrete words that are easily visualized (for example, "accident" instead of "occurrence") or follow an abstract word with concrete example. Also, use parties' names instead of the generic terms "plaintiff" and "defendant."

4. Avoid homonyms — similar sounding words with more than one meaning. Examples include "court," "bar," and "information." Homonyms can create confusion in the listener's mind with respect to which meaning is intended.

5. Avoid synonyms. The listener may assume that the use of different words implies different meanings.

6. Use positive antonyms instead of negative modifiers. For example, use "ignore" instead of "disregard." Negative modifiers are believed to impair comprehension because they require two steps: comprehension of the positive version, then negation of it. Moreover, statements that tell jurors what not to do or what to avoid, by themselves, fail to provide guidance on what jurors should do. Unless it is important to emphasize what the jury is forbidden from doing, the authors recommend instructing them in positive terms.

7. Use humans as the subject of sentences. The use of inanimates as the subject is more abstract and harder to process. Thus, avoid phrases such as "the law says..." because the law is abstract, and does not literally speak.

8. Avoid the use of verbs that can take either transitive or intransitive forms. A

transitive verb indicates action flowing from the subject to the object. For example, in the sentence, "Mr. Jackson hit Ms. Martin," "hit" is a transitive verb (Imwinkelried & Schwed, 1987). By contrast, intransitive verbs do not require a direct object. Elwork, et al. (1982) described the problem:

> Many verbs take on either form (e.g., "If you believe the defendant" versus "If you believe the defendant to be guilty"). The latter have been shown to cause confusion in comprehension because the reader/listener may make a transitive interpretation initially and then has to change it to an intransitive one upon hearing the last part of the sentence. ...[B]y adding the word "that" to the exemplary phrase above, we can avoid much of the problem (e.g., "If you believe that the defendant is guilty..."). (p. 174)

9. Adopt logical organizational structure. The authors recommended using one or a combination of three general organizational schemes: associational, hierarchical, or algorithmic. Associational structure involves grouping topics together that are connected by a common concept. For example, instructions explaining how a particular type of evidence should or should not be used, or instructions covering the conduct expected of jurors during deliberations, might be grouped together.

In a hierarchical structure, higher level concepts are broken down into their lower level components. For example, in defining "intent to murder," the judge might first list its components: willfulness, premeditation, deliberation, and malice. Each of the components might then be further explained.

In an algorithmic structure, one concept builds on the other. This type of

organization is particularly useful when causal or temporal relations are being explained. A typical use of an algorithmic structure is an instruction that outlines, step-by-step, a series of decisions the jury must make in reaching its verdict.

(For a summary of the psycholinguistic concepts outlined by Charrow and Charrow (1979) and by Elwork, et al. (1977, 1982), see Imwinkelried and Schwed (1987)).

Studies Testing Simplified Instructions

As noted above, Charrow and Charrow (1979) used a paraphrase test to evaluate common California instructions. Low comprehension rates were found and many linguistic problems were identified. In the second part of their study, Charrow and Charrow rewrote each of the 14 jury instructions used in the first part, eliminating as many of the linguistic problems as feasible. The revised instructions were tested for comprehension, again using the paraphrase task. The researchers found a 35% overall improvement when comparing the original pattern instructions to the newly-revised instructions. The greatest improvement in comprehension was seen for the instructions rated by attorneys as the most conceptually difficult. The researchers also analyzed comprehension for each type of linguistic problem. Improvement in comprehension ranged from 11% for eliminating or shortening unnecessary word lists, to 81% for eliminating passive phrases in subordinate clauses. Charrow and Charrow concluded that the pattern instructions used in the study were not well understood, that particular linguistic problems were largely responsible for the miscomprehension, and that eliminating these problems resulted in improved understanding, even for complex topics.

Several other studies have also compared comprehension of pattern instructions with comprehension of the same instructions rewritten for clarity by the experimenters. Elwork, et al. (1977) compared groups receiving either no instructions, Michigan pattern instructions, or rewritten instructions. Participants viewed a videotape of a Michigan traffic accident trial, after which they indicated their verdicts and completed a comprehension test covering materials in the jury instructions such as the role of the jury, courtroom procedures, driving laws, and negligence issues. The researchers found that comprehension scores were better for rewritten than pattern instructions, and that pattern instructions produced no better scores than the absence of instructions. Similarly, verdict errors (i.e., incorrect verdicts in view of the participants' conclusions about the facts of the case) were fewest for the group receiving rewritten instructions, and about the same for the pattern and the "no instruction" groups. The researchers concluded that pattern instructions fail to help jurors understand the law, and in fact, appear to produce no better results than no instructions at all.

In later studies, these same authors (Elwork, et al., 1982) again compared original with rewritten instructions. In one study, jurors watched a videotape of an actual Nevada attempted murder trial. After the trial, one group of participants received the pattern instructions that had been presented at trial (re-recorded by one of the experimenters). Another group received instructions revised once by the researchers for improved clarity. After evaluating the results, the researchers revised the instructions yet again. A third group of participants viewed the trial and then received these twice-revised instructions.

Comprehension was measured with a short-answer questionnaire, using a face-to-

face interview technique. Question examples include: "Who decides questions of fact?" [Proper answer: the jury.] "What is the name of the crime that the defendant is accused of?" [Attempted murder.] "What is the purpose of jury instructions?" [To inform jurors of the laws that must be applied to the facts of the case.]

Participants receiving the original instructions scored an average of 51% correct. Those receiving the once-revised instructions scored 60% correct. For those receiving the twice-revised version, the comprehension rate rose to 80%. Each increase was statistically significant.

The authors then ran a similar study using a shorter, videotaped burglary trial that involved simpler law and instructions. One group received instructions approximating pattern Florida criminal instructions. The other received instructions rewritten once by the researchers. The authors were interesting in seeing whether rewriting jury instructions would lead to improved comprehension scores when the factual and legal issues were relatively simple. Results were similar to the first study. Comprehension scores rose from 65% for the original instructions to 80% for the revised instructions. The authors noted the apparent value of rewriting instructions for improved clarity, regardless of a trial's complexity.

Severance and Loftus (1982) conducted an extensive series of studies on jury instructions. In the first study, the researchers analyzed questions posed by deliberating juries in actual criminal cases. By doing so, the researchers hoped to identify sources of juror misunderstanding. Through trial records, they identified written questions sent to judges during trial and the responses provided by the judges. About one-half of the

questions fell into one of four categories: (a) elements of the crime charged, particularly the meaning of "intent;" (b) confusion over how to reach a verdict, especially the interpretation of "reasonable doubt" and the requirement of a unanimous verdict; (c) how to reach a decision when multiple charges were involved; and (d) requests related to physical evidence and oral testimony, such as asking to see a transcript of a witness' testimony. Almost universally, the judges responded to the questions by merely referring to previously-given instructions without further comment or explanation. The authors expressed concern over the obvious confusion among jurors and the reluctance of judges to provide adequate guidance.

In Study 2, Severance and Loftus tested the ability of jurors to answer questions about selected instructions and apply the instructions to a novel factual context. Three of the specific instructions selected for study — "reasonable doubt," "intent," and an instruction limiting the use of a defendant's prior conviction — were chosen because they had been problematic for jurors in Study 1. In addition, the study included an instruction outlining jurors' general duties.

Three instruction conditions existed: No Instructions (in which participants received no jury instructions at all); General Instruction (in which participants received only the instruction about a juror's general duties); and General + Specific Instructions (in which participants received the general duty instruction plus the specific instructions about reasonable doubt, intent, and use of a prior conviction).

After the mock trial, participants were given a questionnaire that included a request for their verdict, a multiple-choice comprehension test covering the materials in

the general and specific instructions, and an application test in which participants read a one-paragraph novel fact scenario and chose from a list the appropriate legal conclusion under the facts.

On the multiple-choice comprehension test, the specific instructions improved overall performance, i.e., the General + Specific group performed significantly better than the other groups. The general instruction helped jurors answer questions about their roles as jurors but did not produce better overall comprehension scores when compared with the absence of instructions. With respect to the specific legal topics tested, reasonable doubt was the only concept for which a specific instruction reduced errors; comprehension of intent and use of a prior conviction were not significantly affected by the availability of instructions.

On the application (novel facts) test, the general instruction actually impaired overall performance. Participants in the General Instruction group performed worse than participants in the No Instruction group. Moreover, participants in the General + Specific Instructions group performed only slightly better than those receiving no instructions at all, indicating that pattern instructions provided little help in applying legal concepts. The authors determined that the specific instructions provided no significant help in applying the concepts of intent and reasonable doubt. The instruction on use of a prior conviction, however, did aid in the correct application of that concept.

In Study 3, Severance and Loftus rewrote several pattern instructions using the principles set forth in Charrow and Charrow (1979), discussed above. They summarized the process as follows:

> We tried to eliminate legal jargon and uncommon words on the assumption that people have trouble perceiving, remembering and comprehending unfamiliar words. We also replaced abstract words with more concrete ones and avoided using homonyms (similar sounding words with more than one meaning). We made changes in grammar to avoid compound sentences and awkward, passive constructions. For example, the sentence, "Such evidence may be considered by you in deciding what weight or credibility should be given to the testimony of the defendant and for no other purpose," was broken down into two parts: "You may not use this evidence in deciding whether he or she is guilty or innocent. You may use evidence of prior convictions only to decide whether to believe the defendant's testimony and how much weight to give it." [As another example], the phrase "you have an abiding belief in the truth of the charge..." was changed to "you believe in the truth of the charge...." (quoted from Severance, et al., 1984, p. 207-208, text and footnotes combined)

The participants were presented with a videotaped trial, followed by either pattern instructions (i.e., the general plus specific instructions from Study 2), revised instructions, or no instructions. Each participant then received the same questionnaire that had been used in Study 2.

The researchers found that participants receiving revised instructions were most likely to acquit. Those receiving no instructions were most likely to convict. Pattern instruction participants fell in the middle.

On the comprehension (multiple-choice) test, instructions appeared to aid overall

comprehension, with the best performance turned in by those receiving revised instructions. A similar pattern was also found for test questions on each specific legal concept: Revised instructions produced the best comprehension, absence of instruction produced the worst comprehension, and pattern instructions produced results in the middle.

On the application (novel facts) test, revised instructions enhanced overall performance and produced the highest accuracy rates for each specific legal concept. This time, pattern instructions produced no better results than the absence of instructions.

A multiple regression of the data in Study 3 indicated that more legally knowledgeable participants (as indicated by comprehension and application scores) were "marginally more likely to acquit" (p. 192) in the particular case presented. The authors noted that the case was chosen because it involved ambiguous evidence that could reasonably lead to either conviction or acquittal. Thus, they concluded, under our legal system's presumption of innocence, an increase in acquittals for this study probably indicates better understanding of the law. The authors predicted that "clearly understood instructions on the law will enhance a just determination of guilty or not guilty by sharpening the relevant decision criteria that jurors are supposed to apply to the facts" (p. 195).

Severance, et al. (1984) did a follow-up to the previous series of studies by Severance and Loftus (1982), this time using actual jurors. Participants consisted of either former jurors or persons currently on jury duty waiting for a trial assignment. As before, the authors tested instructions on reasonable doubt, intent, limited use of a prior

conviction, and general duties of the jury. A videotaped burglary trial was shown, followed by either pattern or revised instructions. (Unlike the previous study, this study did not utilize a "No Instructions" condition.) Again, a questionnaire was given that included a verdict decision, a multiple-choice comprehension test, and an application-to-novel-facts test. For this study, a paraphrase test was also incorporated.

The type of instruction (pattern or revised) did not have an effect on the verdict rendered by each participant. On other measures, the results were unspectacular but generally favored the linguistically-revised instructions. Slightly better overall comprehension scores were achieved by participants receiving revised instructions. Revised instructions also significantly improved comprehension for questions about the limited use of a prior conviction. In addition, participants receiving revised instructions were somewhat better able to apply the law to novel fact situations.

For the paraphrase test, participants were asked to paraphrase the general gist of the instructions, a procedure similar to that used by Charrow and Charrow (1979). Persons hearing revised instructions produced more correct idea units and fewer incorrect idea units than those hearing pattern instructions. In fact, the participants receiving revised instructions recited more correct than incorrect phrases, but the opposite was true for the participants receiving pattern instructions. This finding suggests that pattern instructions produce more confusion than understanding.

The authors compared the current jurors (waiting for assignment) with the former jurors. The current jurors tended to be younger, less educated, and less experienced with trials. Not surprisingly, these participants tended to benefit more than the former jurors

from the simpler language of the revised instructions.

The authors also noted that the type of instruction had no effect on the likelihood of conviction. Thus, they concluded, the revisions did not introduce bias, but rather enhanced understanding of the appropriate legal principles.

As a final step, the researchers rewrote the instructions again, this time in what they called "supersimplified" form. (This form is most similar to what is now known as "plain language.") In comparing pattern and supersimplified instructions using college students as participants, the authors found no significant differences on the multiple choice comprehension test. However, participants receiving supersimplified instructions were more accurate in applying the concept of reasonable doubt to novel facts.

The studies discussed above generally support the use of simplified language in jury instructions covering general juror duties, introductory issues, and several commonly-encountered legal topics such as reasonable doubt, intent, and use of a prior conviction. Other studies have also tested narrower, less-common concepts. The degree of improvement varied, but better comprehension or application scores generally resulted from simplifying instructions in several topic areas, including the defense of entrapment (Morier, Borgida, & Park, 1996), the death penalty (Diamond & Levi, 1996; Luginbuhl, 1992; Weiner, et al., 1995), the use of eyewitness testimony (Greene, 1988), and the concept of intervening causation (Prager, Deckelbaum, & Cutler, 1989). For a recent discussion and summary of jury instruction research, including comprehension studies, see Lieberman and Sales (1997).

Roadblocks to Improving Pattern Instructions

Judges often suspect that jurors do not understand jury instructions, but are reluctant to deviate from language established by pattern instructions. The issue of whether the jury understands instructions is speculative and as a practical matter, juror misunderstanding will not be detected and will not provide the basis for appeal. On the other hand, if the judge attempts to clarify instructions by supplementing or deviating from the language of pattern instructions, she or he runs the risk of misstating the law, resulting in appeal, reversal, and retrial. As noted above, Severance and Loftus (1982) found that judges rarely provide useful guidance in response to jurors' questions about instructions. Thus, improving pattern instructions, rather than relying on judges to explain them at trial, appears to be the better route to juror understanding.

Rewriting pattern instructions, however, is expensive, tedious, and time-consuming. It has been described as a "beastly task" (Higgins, 1998, p. 43), requiring input from language specialists, lawyers, and judges; approval by competing interests such as prosecutors and defense advocates; and ideally, testing on mock jurors. These problems are inherent in the process and presumably cannot be avoided. But in addition to such logistical problems, the following arguments have also been levied against revising pattern instructions: arguments based essentially (and many would argue, incorrectly) on the assumption that change is unnecessary.

Attorneys' closing arguments. One argument rests on the belief that the trial attorneys will explain the law during opening and closing argument in a form understandable to the jury, obviating the need to alter current instructions (Reifman, et al.,

1992; Tanford, 1990). Although good attorneys usually do make legal points in simple terms, the attorneys should not be relied upon to provide the law; that is the job of the court. Severance, et al. (1984) called attorney arguments "inevitably biased," requiring the court to provide neutral guidance so that jurors understand the relevant law. Moreover, research findings indicate that juror confusion continues despite attorney argument. Several studies (e.g., O'Reilly, 1976; Reifman, et al., 1992) found that former jurors who had served in actual trials had very little understanding of basic legal concepts involved in the trials, notwithstanding that the jurors had heard opening and closing arguments from the attorneys. Similarly, studies using mock trial scenarios that included attorney argument (e.g., Ellsworth, 1989), also found low comprehension rates among participants. Thus, it is apparent that attorney argument should not be counted on to clear up confusion arising from jury instructions.

Deliberation. A second argument against clarifying jury instructions is based on the assumption that the deliberation process will cure misunderstandings. Proponents argue that the jurors who best understand the instructions will help the other jurors during the deliberation stage. Some researchers have found that juries as a whole perform better with the benefit of deliberation than without it (e.g., Severance, et al., 1984; Forston, 1975). Others, however, are less optimistic. Ellsworth (1989) found no difference between deliberating and non-deliberating mock trial jurors with respect to understanding the judge's instructions. On an 18-item true-false test covering the jury instructions, the deliberating jurors achieved an average score of only 11.7, not significantly different from random guessing. As part of the same study, Ellsworth analyzed statements jurors made

during the deliberations. She observed that when discussing issues of law and attempting to reach a consensus, jurors were almost as likely to discard a correct idea and replace it with an incorrect one as vice versa (48% vs. 52% of the time). She concluded that

> the results are quite distressing, since they mean that the jury does not recognize the right answer when it hears it. Juries who have heard the right definition are as likely to reject it as juries who have heard the wrong one. The jury as a whole does not profit from the abilities of its best members when it comes to questions of law. (p. 219)

Similarly, in one study, Elwork, et al. (1982) found a comprehension rate of only 40% after mock trial deliberations (p. 66). In another study, the same authors found an error rate of 41% after deliberation (p. 15). Diamond and Levi (1996) posit that deliberations only improve comprehension if a "substantial majority" (p. 230) of jury members correctly understand the material in the first place. Thus, the deliberation process appears to be ineffective in curing misunderstandings resulting from incomprehensible jury instructions.

Inherent complexity. Another argument raised in defending the current state of jury instructions concerns legal complexity (Steele & Thornburg, 1988; Tanford, 1990). Some attorneys argue that juror confusion arises from the inherent complexity of the law, rather than the language of the instructions, and no amount of redrafting will make the instructions comprehensible while still accurately reflecting the nuances of the law. The study by Charrow and Charrow (1979) casts doubt on this argument. Several California pattern jury instructions were presented to a group of attorneys who were asked to rate

the conceptual complexity of the instructions without regard to linguistic problems. In other words, the attorneys were asked to disregard linguistic characteristics (such as vocabulary and grammatical form) and rate how difficult the legal concept(s) contained in each instruction would be for the average juror to understand. Later, participants were given one of two versions of each instruction: either the pattern instruction or a rewritten version designed to convey the same information in linguistically-simplified form. Charrow and Charrow found that rewriting produced the greatest increase in comprehension for the instructions that had been rated by attorneys as the most conceptually difficult. They concluded that even very complex concepts can be made more understandable with simplified language. In fact, the most conceptually difficult instructions seem to provide the best hope for improvement.

Recent Changes in Jury Instructions

Several states including Arizona, Pennsylvania, Florida, Montana, Oregon, Michigan, Wyoming, and Alaska, as well as the federal judicial system (Meyer & Rosenburg, 1971; Sales, et al., 1977; Saxton, 1998; Tanford, 1990), have attempted to address the problem of jury instruction comprehensibility by revising their pattern instructions according to psycholinguistic principles. The state of Michigan rewrote its criminal instructions in the early 1990's after a 1987 survey revealed that the state's judges hated the old instructions. "They were embarrassed to give them to the jury because they were so wordy and so ridiculous," explained Judge William Caprathe, chair of the rewrite committee. "They knew the jurors' eyes just rolled back" (quoted at Higgins, 1998, p. 42). Following suit, the state of California recently began a four-year project to revise its

criminal and civil instructions into plain English (McCarthy, 2000).

A 1995 report of the Minnesota Bar Association called for the revision of Minnesota jury instructions into plain English (Park, 1999). Four years later, the Minnesota Committee on Jury Instruction Guides set out to revise the state's pattern instructions for civil trials. The committee employed the aid of Rosemarie J. Park, a professor of education at the University of Minnesota specializing in adult literacy. Park served as a "plain language consultant" in the drafting of an entirely new set of civil jury instructions (Park, 1999.)

Park (1999) outlined some of the plain language principles and recommendations that were incorporated into the new pattern instructions (referred to in Minnesota as "Jury Instruction Guides" or "JIGs"). For example, written copies of the instructions are usually provided to the jury, and it is now recommended that these copies include subheadings. Subheadings enable jurors to scan a set of instructions and find information quickly, and also require the person preparing the instructions to organize material so that only one concept is included in each paragraph.

The new instructions utilize party names, such as "Mrs. Smith," rather than "plaintiff" and "defendant," because jurors often confuse the generic legal terms. (The older instructions used party names sporadically.) The instructions also now use first person designations. "I" has replaced "the court" ("I have decided that Mrs. Smith was not at fault"), and "you" has replaced "the jury" ("It is your job to find the facts").

Whenever feasible, passive language was revised into its active form. For example, "the law requires that fault be apportioned among those parties found to be at

fault" was rewritten as "You must decide the degree to which each person was at fault."

Difficult legal terms were avoided where possible (for example, "property" was substituted for "chattel") or defined if their use was necessary (for example, "superseding cause" is defined at instruction number 27.20). Many redundant legal terms (like "usual and customary") were also eliminated.

Paragraphs were shortened so that each contained only one main idea. To illustrate, consider the basic pretrial instruction. The old version consisted of 15 paragraphs and three subheadings. The portions of the new version that cover the same material consist of 38 paragraphs and five subheadings. In the new instructions, each new idea was placed on a new line, sometimes resulting in the abandonment of traditionally-recognized paragraph structure.

Sentences were broken down and shortened to enhance comprehension. Park discussed the following example. One of the old JIGs provided as follows:

> A passenger has a duty to take active measures to protect (himself)(herself) from danger only when it is apparent that (he)(she) can no longer rely upon the driver for protections, [as when the driver by his conduct shows that (he)(she) is incompetent to drive or where the driver is unmindful of or does not know of a danger known to the passenger] and then only if the passenger becomes aware of the danger at a time and under circumstances where (he)(she) could have prevented the harm. (p. XLII)

The new version says:

"A passenger must act to protect himself or herself when:

a. It is apparent that the driver cannot do so, and

b. The passenger's action could have prevented the harm" (p. XLII).

Where feasible, the new instructions use lists, including vertical lists, to organize and simplify material (as illustrated by the example immediately above).

Traditional grammatical rules are occasionally violated. For example, if clarity is improved, sentences might begin with "And," "But," or "So," infinitives might be split, and sentences might end with a preposition. Park explained, "plain language emphasizes meaning over rules and clarity over elegance" (p. XLIII).

Testing Today's Plain Language Jury Instructions

Despite action by several states toward plain language jury instructions, most states still have made no attempt to simplify and improve their pattern instructions (Ellsworth & Reifman, 2000). The plain language movement has progressed slowly with respect to jury instructions, and jury instruction revision continues to be the subject of discussion and debate in many states (Higgins, 1998).

The current study was designed to investigate whether linguistic change is feasible and helpful today, due to two factors that distinguish it from most prior studies. These distinctions concern the legal sufficiency of the revised instructions and the degree of difference between the original and revised instructions.

In prior studies, the experimenters rewrote the instructions, usually without any formal procedure for testing their legal sufficiency. Thus, the accuracy of the rewritten instructions was not established. The current study tested actual simplified Minnesota jury instructions: instructions not only drafted under plain language principles, but developed

by a drafting committee of attorneys and judges for use in actual court trials. These instructions are currently in use in Minnesota. Research utilizing such instructions may provide more relevant or convincing evidence of the need for revision (or lack thereof) than studies in which instructions were revised by the experimenters.

Furthermore, the jury instructions used in prior studies may not be representative of instructions currently existing in many states. Most of the prior studies were conducted in the 1970's or early 1980's, and involved pattern instructions that contained archaic, difficult linguistic passages. Drafting committees may consider their current pattern instructions to be simpler, and may be unpersuaded by research based on older, more convoluted instructions. (In fact, the "revised" instructions in some prior studies — the ones generally found to increase comprehension — are similar to the older, non plain language instructions recently superseded in Minnesota.) Thus, for some states, the question remains open whether further revision into plain language would be helpful. Minnesota's recent foray into plain language jury instructions provided an opportunity to test that question.

CHAPTER II

METHOD

Participants

Eighty-three undergraduates at the University of North Dakota (44 women, 39 men) served as participants in this study. Subjects were recruited through a sign-up sheet at the psychology building, and received course credit for their participation. Subjects were required to be at least 18 years old (the minimum age for jury duty) and no subject was allowed to participate more than once. Most subjects were underclassmen (48 freshmen, 17 sophomores, 14 juniors, and 4 seniors).

Materials

1. Jury instructions. The jury instructions used in this study consisted of instructions selected from the new (drafted in 1999) Minnesota Jury Instruction Guides ("JIGs"), and corresponding instructions from the last-previous version of the Minnesota JIGs (see Minnesota District Judges Association Committee on Jury Instruction Guides, 1986, 1999).

The following specific instructions were selected:

Title/topic	Old JIG #	New JIG #
Prelim. Instruction (Before Trial)	1	10.15
Duties of Judge and Jury	2	10.20
Consider Instructions as a Whole	3	(part of 10.20)

Deliberation and Verdict	(divided)	10.45
- Foreperson	200	10.45
- Duty to Discuss	206	10.45
- Kinds of Verdicts	203	10.45
- Responsibility	201 & 205	10.45
Direct and Circumstantial Evid.	20	12.10
Impeachment	24	12.25
Burden of Proof	70	14.15
Negligence	101	25.10
Direct Cause	140	27.10
Superseding Cause	142	27.20

These particular instructions were chosen primarily because they are common to virtually every civil trial, and because the topics addressed in these instructions have been tested in prior studies (e.g., Elwork, et al., 1977).

For some instructions, the new version contained material that had no counterpart in the older instructions. For example, new JIG 10.45 includes subsections covering items that are allowed into the deliberation room, how the jury is to communicate its verdict, and the jury's duty to keep the deliberations secret. By contrast, the old instructions contained no corresponding information. In order to keep the content of the instructions as consistent as possible across treatment groups, subsections that have no counterpart were omitted in this study.

The researcher prepared audiotaped recordings of both sets of instructions for presentation to the participants. In addition, a written copy of the instructions was available for each participant. Topical headings that are contained in the instructions were omitted from the audio recording but included on the written copies, consistent with general practice and the recommendations of the drafting committee (Park, 1999). Each set of instructions was presented in numerical order according to the JIG numbers listed

above, to reflect the order of presentation in actual trials.

The text of each instruction as it was used in this study appears in the appendices. (Appendix A contains the old instructions, Appendix B the new, plain language instructions.)

2. Comprehension test. A comprehension test was administered to each participant. The test consisted of 28 multiple-choice, true-false, fill-in-the-blank, and short essay questions relating to material covered in the jury instructions. The test appears at Appendix C. True-false and multiple choice items were scored as either zero points (incorrect) or two points (correct). Fill-in-the-blank and short essay questions were scored as zero, one, or two points, depending on how well the subject appeared to grasp the material. The maximum possible score on the test was 56 points.

A paper and pencil test was chosen for its ease of administration and scoring, and because events in a mock trial scenario are difficult to interpret. English and Sales (1997) recommend that initial testing of jury instructions be outside a mock trial context, in order to simplify the participants' task.

3. Verbal test. The vocabulary section of the Nelson-Denny Reading Test (Form E) (Brown, Bennett, & Hanna, 1981) was administered to test for general verbal ability. The Nelson-Denny is a 15-minute, 100-item, multiple-choice vocabulary test.

4. Demographic questionnaire. Participants completed a short questionnaire of demographic information, including age, gender, year in school, prior occupation, college major, native language, legal training, and prior jury experience. A copy of the questionnaire appears at Appendix D.

Procedure

Participants signed up for group sessions of up to ten persons. Actual session sizes ranged from seven to eleven subjects. One of two treatments was administered during each session. Under one treatment, participants received selected pre-1999 instructions. Under the other treatment, participants received new instructions covering the same material.

At the start of the session, each participant read and signed a consent form. The researcher then reminded the participants of the purpose of the study and of the upcoming procedures. Each participant then received a written copy of the jury instructions to be used in that session. The participants were encouraged to follow along on the written copy as the researcher then played the audiotaped recording of the instructions. (Participants were allowed to look at a written copy of the instructions because real jurors usually do so, and because certain visual changes were incorporated into the new instructions for clarity.) The experimenter then retrieved all written copies of the instructions and administered the comprehension test. Subjects were asked to proceed forward through the comprehension test and not return to a previous question and change an answer. (This was done because some of the later questions may have revealed the answers to earlier questions.) After all participants in the session completed the comprehension test, the researcher collected the tests. Participants were then administered the Nelson-Denny vocabulary test (Form E) under standard conditions for that test, including a 15-minute time limit. Finally, participants completed the demographic questionnaire.

CHAPTER III

RESULTS

Demographic Characteristics

The groups did not differ significantly with respect to the age of the participants. As shown on Table 1, the mean age of those receiving the older, non plain language jury instructions ("old group," N=40) was 20.23 years (SD=3.88). The mean age of those receiving the newer, plain language jury instructions ("new group," N=43) was 20.63 years (SD=3.02).

Table 1

Demographic Characteristics of Each Treatment Group

Group	Mean Age in years	Group Composition (in percentages)					
		Women	Men	Freshmen	Sophomores	Juniors	Seniors
Old	20.23 (3.88)	42.5	57.5	70.0	15.0	12.5	2.5
New	20.63 (3.02)	62.8	37.2	46.5	25.6	20.9	7.0

Note. Parentheses indicate standard deviations.

The groups did differ, however, on other demographic characteristics. Although the overall gender mix was approximately equal (53% women, 47% men), women constituted 62.8% of the new group and only 42.5% of the old group. Thus, women were

overrepresented in the new group and underrepresented in the old group. In addition, the old group contained a disproportionately high number of freshmen, while the new group contained most of the sophomores, juniors, and seniors. These demographic characteristics did not, however, appear to produce group differences on the dependent variable, as indicated by the regression analysis discussed later.

Comprehension Test Total Score

The dependent variable of primary interest was total score on the comprehension test (56 possible points). Scores ranged from a low of 19 to a high of 54. The overall mean for all subjects was 36.41 (SD=7.41). The two treatment groups produced virtually identical mean scores. The old group had an average score of 36.70 (SD=7.28). The new group had an average score of 36.14 (SD=7.60). The difference was not significant, $t(81)=.34$, $p=.733$. These results are shown on Table 2.

Vocabulary Test

On the 100-point Nelson-Denny vocabulary test, the raw scores ranged from 33 to 93 (M=60.31, SD=15.74). Percentile scores (relative to nationwide norms for each college year) ranged from 7 to 96 (M=52.80, SD=25.70). The old group scored better on the vocabulary test (raw score M=63.45, SD=16.27; percentile score M=59.70, SD=25.75) than did the new group (raw score M=57.40, SD=14.83; percentile score M=46.37, SD=24.21). Using an alpha level of .05, the difference in raw scores was marginally significant, $t(81)=1.77$, $p=.080$. The difference in percentile scores was significant, $t(81)=2.43$, $p=.017$. These results are shown on Table 2.

Table 2

Mean Comprehension, Vocabulary, and Vocabulary Percentile Scores for Each Treatment Group, and T-Test Results for Group Comparisons

Group	Mean	SD	t	sig.
Comprehension Test Score (maximum possible=56)				
Old	36.70	7.28	0.34	.733
New	36.14	7.60		
Vocabulary Raw Score (maximum possible=100)				
Old	63.45	16.27	1.77	.080
New	57.40	14.83		
Vocabulary Percentile Score				
Old	59.70	25.75	2.43*	.017*
New	46.37	24.21		

*$p < .05$.

Vocabulary-Comprehension Relationship

Vocabulary scores were significantly correlated with comprehension scores, $r=.563$, $p<.001$. The relationship between vocabulary and comprehension scores was similar for both groups (old group $r=.596$, $p<.001$; new group $r=.540$, $p<.001$).

Based on prior research (Severance, et al., 1984), the simplification of jury instructions was expected to benefit people of lower verbal skills more than people of higher verbal skills. Thus, the participants were divided into two groups according to their scores on the vocabulary test. "Low verbal" subjects were defined as those who scored below the median raw score (57) on the vocabulary test. "High verbal" subjects scored above the median. (For purposes of this median-split analysis, three subjects were omitted because they produced the exact median score.)

Not surprisingly, the high verbal participants scored significantly better on the comprehension test (M=39.41, SD=7.00) than the low verbal participants (M=33.44, SD=6.84), F(1,76)=14.77, p<.001. But the key issue was how the two verbal groups responded to differences in jury instructions. High verbal subjects who received the new jury instructions averaged about two points better on the comprehension test (M=40.41, SD=6.30) than those receiving the old instructions (M=38.71, SD=7.50), a non-significant difference, t(39)=.76, p=.449. Contrary to expectation, however, for low verbal participants — the ones assumed to benefit most from new instructions — comprehension scores for both instruction groups were virtually identical (old group M=33.40, SD=6.02; new group M=33.46, SD=7.42; t(37)=.03, p=.980). These results are shown on Table 3.

Table 3

Mean Scores on the Comprehension Test for High- and Low-Verbal Participants by Treatment Group, and T-Test Results for Treatment Group Comparisons

Verbal/Treatment Condition	Mean	SD	t	sig.
High Verbal Participants				
Old group	38.71	7.50	.76	.449
New group	40.41	6.30		
Overall	39.41	7.00		
Low Verbal Participants				
Old group	33.40	6.02	.03	.980
New group	33.46	7.42		
Overall	33.44	6 84		

Covariate Analysis

Because vocabulary scores were significantly correlated with comprehension scores, covariate analyses were conducted to factor out the apparent pre-existing group differences in verbal skills. When vocabulary raw score was used as the covariate, the new group produced a slightly higher adjusted score (M=36.93, SE=0.950) than the old group (M=35.85, SE=0.980). This difference was not significant, F(1,80)=.61, p=.436. A second covariate analysis was conducted using vocabulary percentile score as the covariate. This produced a slightly greater, but still non-significant, difference between the groups (new group M=37.11, SE=1.00; old group M=35.66, SE=1.04; F(1,80)=.97, p=.327). Covariate analyses results appear on Table 4.

Table 4

Mean Adjusted Scores and Significance Levels for Each Covariate Analysis

Group	Mean	SE	F	sig.
Vocabulary Raw Score as Covariate				
Old	35.85	0.98	.61	.436
New	36.93	0.95		
Vocabulary Percentile Score as Covariate				
Old	35.66	1.04	.97	.327
New	37.11	1.00		

Regression Analysis

A regression analysis was conducted using total score on the comprehension test as the dependent variable. Jury instruction treatment group, vocabulary raw score, gender, and college year were tested as predictors. A forward regression analysis was

employed. This regression method adds predictor variables into the model sequentially according to their significance levels. The process stops when there are no more variables that explain a significant portion of additional variance. Here, the significance level required for entry into the model was set at 0.05. Under this procedure, vocabulary raw score proved to be the only significant predictor of comprehension score, $F(1,81)=37.53$, $p<.001$ ($B=.563$, $p<.001$), accounting for 31.7% of the variance in comprehension score. Jury instruction group, gender, and college year did not qualify for inclusion in the model.

Individual Comprehension Test Items

The comprehension test consisted of 28 individual questions. Each of these items was analyzed to determine whether the two jury instruction treatment groups differed in comprehension. Score information for each of the 28 items is presented on Table 5.

The question on which subjects performed best was question number 20. All but one subject (98.8%) knew that the following is a false statement: "During the course of the trial, it is the civic duty of jurors to gather information about the case from news reports." The items answered correctly by the fewest participants were questions 5 and 13 (24% and 17% correct, respectively). Both of these questions were expected to be very difficult, requiring participants to understand limitations on the use of a witness' prior inconsistent statement, and how those limitations differ for party and non-party witnesses.

Four questions produced significant differences ($p<.05$) between the jury instruction groups. The new group scored better on questions 9 (all jury instructions are equally important) and 14 (application of the "reasonable person" standard for negligence). The old group scored better on questions 23 (the jury should not consider

Table 5

Mean Score, Standard Deviation, and Proportion Correct for Each Question on the Comprehension Test, by Jury Instruction Group

Treatment Group	Question number														
	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Q13	Q14	Q15
New group (N=43)															
M	1.84	1.72	1.16	1.58	0.33	1.72	1.12	1.26	2.00	0.70	1.67	1.63	0.33	1.49	1.67
SD	.53	.70	1.00	.82	.75	.70	1.00	.98	.00	.96	.75	.79	.75	.88	.75
Prop. correct	.92	.86	.58	.79	.17	.86	.56	.63	1.00	.35	.84	.82	.17	.75	.84
Old group (N=40)															
M	1.93	1.85	1.50	1.75	0.65	1.80	1.20	1.20	1.75	0.80	1.50	1.35	0.35	0.95	1.50
SD	.35	.53	.88	.67	.95	.61	.99	.99	.67	.99	.88	.95	.77	1.01	.88
Prop. correct	.97	.93	.75	.88	.33	.90	.60	.60	.88	.40	.75	.68	.18	.48	.75

Treatment Group	Question number													
	Q16	Q17	Q18	Q19	Q20	Q21	Q22	Q23	Q24	Q25	Q26	Q27	Q28	Total
New group (N=43)														
M	1.49	1.77	1.26	1.91	2.00	1.30	0.60	1.21	1.07	0.51	0.84	1.02	0.95	36.14
SD	.88	.65	.98	.43	.00	.96	.93	.99	1.01	.88	.75	.64	.82	7.60
Prop. correct	.75	.89	.63	.96	1.00	.65	.30	.61	.54	.26	.42	.51	.48	.65
Old group (N=40)														
M	1.75	1.80	1.10	1.90	1.95	1.45	0.70	1.75	0.85	0.55	1.30	0.85	0.68	36.70
SD	.67	.61	1.01	.44	.32	.90	.97	.67	1.00	.90	.82	.80	.94	7.28
Prop. correct	.88	.90	.55	.95	.98	.73	.35	.88	.43	.28	.65	.43	.34	.66

Note. For questions 1, 26, 27, and 28, answers were scored as 0, 1, or 2 points. For these items and for Total score, proportion correct refers to the proportion of total possible points. For all other questions, scores were either 0 (incorrect) or 2 (correct). For these items, proportion correct refers to both the proportion of total possible points and the proportion of group subjects who got the item correct.

the effect of its answers on the parties) and 26 (circumstances for a non-unanimous verdict). Table 6 gives score and t-test information for these four questions.

Table 6

Mean Scores and T-Test Results for Comprehension Test Questions Producing Significant Group Differences

Test Item	Old Group	New Group	t	sig.
Ques. 9	1.75 (0.67)	2.00 (0.00)	2.36*	.023*
Ques. 14	0.95 (1.01)	1.49 (0.88)	2.58*	.012*
Ques. 23	1.75 (0.67)	1.21 (0.99)	2.93*	.004*
Ques. 26	1.30 (0.82)	0.84 (0.75)	2.67*	.009*

Note. Parentheses indicate standard deviations.
*$p < .05$.

For some of the questions, participants were expected to make certain errors based on common misconceptions about legal rules. For example, it was anticipated that some participants would mistakenly think that fewer juror votes are required for a defense verdict than for a plaintiff verdict (see Forston, 1975, finding that many people believe a non-unanimous verdict is acceptable for a not-guilty verdict). In fact, a verdict for either side requires unanimity (except under limited circumstances in a civil case). Any other result constitutes a hung jury, not a verdict. Accordingly, the comprehension test included separate questions asking how many juror votes are required for a plaintiff verdict and for a defense verdict (see questions 1 and 2, Appendix C). The best answer for both questions was six. An answer of five was also credited because under certain

circumstances, five jurors may return a verdict. Most participants (89%) gave credited answers. Twelve subjects (14%), however, incorrectly indicated that the number of jurors differs. (The percentages add to more than 100 due to overlap between these categories.) Consistent with the researcher's expectation, seven subjects stated that more jurors are required for a verdict against the defendant. Surprisingly, five people apparently believed that a verdict against the defendant is easier to achieve, requiring fewer jurors, than a verdict in defendant's favor.

It was also anticipated that people would incorrectly assume that circumstantial evidence is legally inferior to direct evidence (see, e.g., Strawn & Buchanan, 1976, finding that only 57% of instructed subjects understood that circumstantial evidence constitutes legal evidence). Indeed, 41% of the participants in the current study incorrectly endorsed the following statement: "By law, direct evidence is more reliable and more important than circumstantial evidence" (see question 18, Appendix C).

Based on pilot work, the researcher also predicted that participants would inappropriately invoke a criminal standard of proof (see question 10, Appendix C). As expected, over half (58%) of the subjects responded that in order for the jury to vote yes to a claim, the claim must be "proved beyond a reasonable doubt" (the criminal standard). Moreover, six percent thought acceptance of a claim requires that "no believable evidence was presented against the claim" (not a standard of proof in any type of case). These descriptions of proof are far more strict than the correct civil standard contained in the instructions: In order to vote for a claim, the jury must believe that "the claim is more likely true than not true." Only 37% of the participants responded correctly.

In a similar vein, subjects were asked to quantify the level of persuasion on a scale of 0 to 100, with the specification that "50" represents an equal split of evidence for and against the claim (see question 25, Appendix C). No law or jury instruction actually specifies proof on a quantified scale, but a correct understanding of the instructions should produce an answer of about 51. (Credited answers included "51%", "X>50", and "51/49".) Sixty-nine percent (56 out of the 81 subjects who responded with a number) quantified the level of persuasion as being "75" or higher. Almost half (45%) of the participants indicated that persuasion must be "100%," an incorrect standard even in criminal cases requiring the highest level of proof in American law.

CHAPTER IV

DISCUSSION

General Findings and Limitations of the Study

The results of this study failed to support the hypothesis that plain language instructions would produce higher overall scores on the comprehension test. A number of factors, however, may explain the lack of difference in scores. First, as a group, participants receiving the plain language instructions appeared to have lesser verbal skills (as measured by the vocabulary test) than participants receiving the older instructions. Vocabulary skills were correlated with comprehension scores, confounding the results. A covariate analysis suggested that had the groups been equal on vocabulary score, the new group would have scored slightly better than the old group, as predicted. The difference in adjusted means, however, was unimpressive (less than two points out of a possible 56) and non-significant. Moreover, regression analysis indicated that vocabulary score, but not jury instruction group, predicted comprehension score. Also, only the high verbal participants appeared to benefit (and only minimally) from the language change. Thus, two conclusions are suggested by the results of this study. First, a person's verbal skills exert a significantly greater influence on comprehension than the language style of the jury instructions. And second, the new instructions failed to accomplish their primary purpose: increasing comprehension among people who need it most — those with lesser verbal

skills. More research is needed, however, in which the results are not confounded by an unequal distribution of verbal skills across treatment groups.

Because jury instruction group did not appear to create any comprehension difference, a question arises regarding how much the instructions helped at all. In fact, the responses to the essay questions (i.e., items 26 (non-unanimous verdict), 27 (direct evidence), and 28 (circumstantial evidence)), were often surprisingly devoid of any apparent grasp of the material. This was true even for the group receiving the new instructions, in which specific examples were added to help define and clarify the concepts of direct and circumstantial evidence. An interesting follow-up study could involve administering the comprehension test to participants who have not received any jury instructions at all. This might identify what proportion of correct answers are the product of pre-existing knowledge or guessing. (Notwithstanding the poor performance by some on the essay questions, the new group scored better (49% of the possible points) than the old group (38%) in defining direct and circumstantial evidence. Although the difference was not significant, it may suggest that the new added language is beneficial for some people.)

The dependent variable measure may have posed a problem in this study. The comprehension test was designed to assess understanding of the instructions but may have been ambiguous or confusing for the subjects. If so, the test may have failed to tap into whatever comprehension differences existed. For example, question number three asked, "In a jury trial, who decides fact issues? In other words, who decides what events actually occurred?" It was assumed that this question would be very easy and that virtually every

participant would write, "the jury." Instead, answers included not only the jury, but the judge, the lawyers, the witnesses, the evidence, and others. Obviously, participants interpreted this question in many different ways. Perhaps future research could include an interview component to identify ambiguities.

Scoring proved to be more difficult than expected. Scoring criteria were prepared in advance, but many subjects provided unanticipated answers to the open-ended questions or multiple responses to single-answer questions. Also, a few questions were so broad that few preset criteria could be established (e.g., questions 27 and 28). Thus, scoring was often a "seat of the pants" decision. Moreover, the researcher did all scoring by herself. The eventual scores, then, were to some extent the product of subjective scoring by a single person. Any bias or inconsistency in the researcher's scoring, though unintended and unidentified, could have affected the results. I dition, the decision to score on the basis of two points per question (in order to allow one-point partial credit for open-ended questions) weighted the responses differently than if only one point per question and no partial credit had been allowed.

The generalizability of this study may be limited due to the use of college students as participants. Prior studies (Forston, 1975; Severance, et al., 1984; see Lieberman & Sales, 1997) have suggested that well-educated subjects are better able to understand older, more convoluted instructions and therefore derive less benefit from simplified language. Accordingly, the use of college students in this study may have minimized differences in comprehension that would otherwise have resulted from the language revision. Perhaps a greater difference would be identified by including a more diverse

population of jury-aged community members in future research.

It is possible, of course, that the jury instructions used in this study simply do not produce any comprehension difference. Most of the prior research in this field, conducted during the 1970's and 1980's, found low comprehension rates for then-current instructions and improved comprehension for revised instructions. But in the current study, the "old" treatment consisted of relatively modern instructions (compared with the prior research), and the "new" treatment consisted of a language style virtually untested before now. The only previous jury instruction study that addressed a similar linguistic difference found only very limited improvement for what the authors called "supersimplified" language (Severance, et al., 1984), language similar to today's "plain language." It may be that simplification to the level now found in Minnesota civil jury instructions produces no advantage over the language style that had been in effect prior to that.

Group Differences on Individual Test Items

The two treatment groups produced significantly different error rates on 4 of the 28 comprehension test items. The new group scored better on questions 9 and 14, and the old group scored better on questions 23 and 26.

Question nine asked the participants which jury instructions are most important. The correct multiple-choice answer was d ("All instructions are equally important"). All participants in the new group gave the correct answer, but five participants in the old group (12.5%) responded incorrectly, producing a significant group difference. The jury instructions pertaining to this issue appear to be very much alike. The older instruction reads: "In following my instructions, you must follow all of them and not single out some

and ignore others; they are all equally important" (p. 60, App. A). The new instruction reads: "You must follow all of the instructions. Do not single out some and ignore others--all of them are equally important" (p. 67, App. B). There is no apparent explanation within the jury instructions for the group difference on question number nine. Rather, the difference seems to be a statistical artifact. The new group scores produced a standard deviation of zero, thus inflating the t-value and creating a statistical difference. In fact, the actual difference in mean scores (0.25) was smaller than the mean difference for several other questions that had higher standard deviations and thus, non-significant t-values.

Question 14 was a negligence application question requiring participants to recognize that negligence is tested on an objective standard. Question 14 stated as follows:

> You are a juror in a negligence trial. You believe both of the following facts:
>
> 1. A reasonable person would have acted differently than the defendant did.
>
> 2. The defendant believed he was being reasonable and careful.
>
> Will you vote to find the defendant negligent?
> a. Yes
> b. No

In this question, fact 1 contains the essential definition of negligence. Fact 2 is irrelevant. The correct response is option a ("Yes"). Three-fourths (74.5%) of participants receiving the new instructions answered correctly, but less than half (47.5%) of those receiving the old instructions were correct. The old instruction (p. 63, App. A) provides as follows:

> Negligence is the failure to use reasonable care. Reasonable care is that care which a reasonable person would use under like circumstances. Negligence is the doing of something which a reasonable person would not do, or the failure to do something which a reasonable person would do, under like circumstances.

The new instruction (p. 69, App. B) provides as follows:

> **Definition of "reasonable care"**
>
> Reasonable care is the care a reasonable person would use in the same or similar circumstances.
>
> **Definition of "negligence"**
>
> Negligence is the failure to use reasonable care.
>
> Ask yourself what a reasonable person would have done in these circumstances.
>
> Negligence occurs when a person:
>
> 1. Does something a reasonable person would not do; or
> 2. Fails to do something a reasonable person would do.

Thus, the new instruction contains obvious changes in wording, grammar, organization, line spacing, headings, and use of lists. These changes may be responsible for better comprehension by the new group on question 14.

Question 23 was a true/false item asking subjects to endorse or disclaim the following statement: "When answering questions on the verdict form, jurors should consider the effect that their answers will have on each party." [Correct answer: false.] Eighty-eight percent of the old group participants responded correctly, compared with only 61% of the new group participants. Other than passive and active language, the instructions on this issue are quite similar. The old instruction provides: "Whether or not a particular answer is favorable to one party or the other should not concern you" (p. 62, App. A). The new instruction provides: "You must not be concerned that a particular

answer on the verdict form is favorable to one party or the other" (p. 67, App. B). There seems to be no obvious explanation for better scores with the older instruction.

The final item to produce significant group differences was question 26. This was an open-ended, short-essay question asking, "Under what circumstances may a verdict be non-unanimous (that is, not all jurors agree)?" Responses were scored as 0, 1, or 2 points. A two-point answer included the two most important requirements: a minimum of six hours of deliberation, and five jurors concurring in the verdict. (The jury instructions used in this study were designed for a six-person jury.) The old group scored 65% of the possible points, the new group only 42%. In this case, the difference may have been produced by the heading of one of the instructions, rather than the text. The new instructions included the relevant information as part of a long section, and within a subsection labeled "Divided verdict" (p. 68, App. B). The old instructions included the information in a short section with this major heading centered on the page:

RETURN OF VERDICT—
5/6 VERDICT

(p. 64, App. A). Fully 20% of the old group participants included the fraction "5/6" in their responses to questions 1, 2, and/or 26, even though whole numbers would have been more appropriate answers. (Other subjects may also have remembered the fraction but opted to respond in non-fraction form.) The relatively high occurrence of this response suggests that the "5/6" designation in the old instruction was quite memorable. This may explain why the old group scored better than the new group on question 26.

Participants' Preconceived Ideas

Perhaps the most interesting finding in this study is that people appear to maintain preconceived notions about legal rules despite instruction to the contrary. Ellsworth (1989) noted that "juries rely at least as much on legal knowledge gained outside the courtroom as they are [sic] on the judge's instructions" (p. 221). In the current study, the participants were advised at the start of the session that they would be listening to instructions relating to a civil case. The jury instructions themselves specifically stated that a "more likely true than not true" standard of proof was to be applied. Nevertheless, on the comprehension test, over half (58%) of the participants indicated that proof must be "beyond a reasonable doubt," 69% quantified the level of persuasion as being 75% or higher, and almost half (45%) quantified it at 100%, an improper standard in any trial. It would seem that the high standard of proof in criminal trials, so often recited on television and in movies, not only resists being replaced by new information, but becomes elevated even beyond its legitimate parameters (see also Saxton (1998), finding that 38% of instructed participants applied a criminal standard in a civil case).

Similarly, almost half of the participants incorrectly indicated that circumstantial evidence is legally inferior to direct evidence. This seems to be a common misconception among laypersons. Strawn and Buchanan (1976) found that despite instruction to the contrary, barely half of their subjects understood that circumstantial evidence is legal evidence. Saxton (1998) found that after being instructed to give equal weight to direct and circumstantial evidence, over one-third of his subjects believed they were required by law to give less weight to circumstantial evidence. The law, in fact, makes no distinction

between the value of direct and circumstantial evidence. Circumstantial evidence can support an entire case.

Additional insight into people's pre-existing beliefs comes from questions about the number of jurors required for a verdict. Although an impressive number of participants responded correctly, 12 participants (14%) incorrectly indicated that a different number of jurors is required for a defense verdict as compared with a plaintiff verdict. Most of these subjects thought that fewer juror votes were required for a defense verdict (see Forston, 1975, finding that former jurors believed non-unanimity was acceptable for a not guilty verdict). This finding is probably the product of two factors: misconception about criminal rules (unanimity is required for any criminal verdict), and the failure of most people to realize the distinction between criminal and civil rules (see, e.g., O'Reilly, 1976, noting that "defendants in civil cases were being found 'guilty' or 'not guilty'" (p. 70), verdicts that exist only in criminal cases).

Thus, it would appear that at least on some issues, participants retained prior notions about the law and failed to recognize or retain contrary information from the instructions. Similarly, Smith (1993) found that naive beliefs about the elements of crimes lead to inaccurate verdicts among mock jurors. She further found that more accurate verdicts resulted when common misconceptions were specifically acknowledged in jury instructions, followed immediately by a statement of the correct rule. Saxton (1998) also found jury instructions ineffective in dislodging preconceived beliefs about circumstantial evidence and burdens of proof. He recommended that jury instructions acknowledge such likely errors and explain why they are incorrect.

With regard to the standard of proof issue, for example, instead of simply stating the civil standard, jurors might be told something like this:

> Many people think that all court cases must be proved beyond a reasonable doubt, but this is not true. That level of proof is only required in criminal cases. Today, however, you are deciding a civil case. In today's case, you should vote "yes" to a claim if you believe that the claim is more likely true than not true.

By cognitively activating and negating the preconceived notion, jurors may be more likely to recognize the contradiction between prior knowledge and current instruction, and better able to revise their beliefs accordingly.

APPENDICES

APPENDIX A: OLD (PRE-1999) JURY INSTRUCTIONS

PRELIMINARY INSTRUCTION— BEFORE TRIAL

Members of the jury:

Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial.

EVIDENCE

The evidence from which you will find the facts consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to, or that the court may instruct you to find.

Certain things are not evidence and must not be considered by you. I will list them for you now:

3. Statements, arguments, and questions by lawyers are not evidence.

4. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

5. Testimony that the court has excluded or told you to disregard is not evidence and must not be considered.

6. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here.

In the course of the trial, you are going to hear the testimony of witnesses, and you will have to make judgments about the credibility of the testimony. I ask you to be patient, and listen carefully to the testimony of all the witnesses, and keep it all in mind until you hear the entire case. As you listen to the witnesses you should take note of such matters as their interest or lack of interest in the outcome of the case; their ability and their opportunity to know and remember and tell the facts; their manner; their experience; their frankness and sincerity or the lack thereof; the reasonableness or unreasonableness of the witness's testimony in light of all the other evidence in the case; and any other factors that bear on the question of believability and weight. You should in the last analysis rely on your own experience, your own judgment and your own common sense.

DUTY OF THE JURY

It will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply those facts to the law as the court will give it to you. You must follow that law whether you agree with it or not.

But nothing the court may say or do during the course of the trial should be taken by you as indicating what your verdict should be.

CONDUCT AS JURORS

Now, a few words about your conduct as jurors.

First, you should not discuss the case among yourselves or with anyone else. At the end of the trial, you will have as much time as you need to discuss the case. But that is at the end of the trial and not during the trial.

Second, do not read or listen to anything touching this case in any way. If anyone should try to talk to you about it, bring it to the court's attention promptly.

Third, do not try to do any research or make any investigation about the case on your own.

Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

-----(POST-TRIAL INSTRUCTIONS)-----
DUTIES OF JUDGE AND JURY

Members of the jury:

Now that the evidence in this case has been presented, the time has come for me to instruct you on the law. My instructions will cover three areas: first, some instructions on general rules that define and control your duties; second, the instructions that supply the law applicable to the claims and defenses in the case; and third, some guidelines and rules for your deliberations.

DUTIES OF THE JURY

In defining the duties of the jury, let me first give you a few general rules:

It is your duty to find the facts from all the evidence in the case. To the facts as you find them you must apply the law as I give it to you.

The questions that you must decide will be submitted to you in the form of a special verdict consisting of several questions. You must answer these questions by applying the facts as you may find them to be. I shall give to you the rules of law that apply to these questions and you must apply them in arriving at your answers. It is the duty of the court to order judgment according to the law and the answers you have returned.

You must follow the law as I give it to you, whether you agree with it or not. And you must do your duty as jurors regardless of any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions, or into anything the court may have said or done, any suggestion from the court as to what verdict you should reach.

Deciding questions of fact is your exclusive responsibility. In doing so, you must consider all the evidence you have heard and seen in this trial, and the reasonable inferences to be drawn from that evidence. And you must disregard anything you may have heard or seen elsewhere about this case. Whether or not a particular answer is favorable to one party or the other should not concern you.

INSTRUCTIONS TO BE CONSIDERED AS A WHOLE

You must consider these instructions as a whole and regard each instruction in the light of all the others. The order in which the instructions are given is of no significance.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

A fact may be proved by either direct or circumstantial evidence, or by both. The law does not prefer one form of evidence over the other.

A fact is proved by direct evidence when, for example, it is proved by witnesses who testify to what they saw, heard, or experienced, or by physical evidence of the fact itself. A fact is proved by circumstantial evidence when its existence can be reasonably inferred from other facts proved in the case.

IMPEACHMENT

In deciding the believability and weight to be given the testimony of a witness, you may consider:

1. Evidence that the witness has been convicted of a crime. In doing so, you may consider whether the kind of crime committed indicates the likelihood of the witness telling or not telling the truth.

2. Evidence of the witness' reputation for truthfulness.

3. Evidence of a statement by or conduct of the witness on some prior occasion which is inconsistent with the witness' present testimony. This evidence may be considered by you only for the purpose of testing the believability and weight of the witness' testimony and for no other purpose. If, however, the statement was given under oath or the witness is a party in this case, the evidence of the prior inconsistent statement or the conduct of the party may be considered as evidence bearing on the issues in this case as well as for testing believability and weight.

BURDEN OF PROOF

In order to answer any question "yes", the greater weight of the evidence must support such an answer, otherwise you should answer the question "no". Greater weight of the evidence means that all of the evidence by whomever produced must lead you to believe it is more likely that the claim is true than not true. If the evidence does not lead you believe it is more likely that the claim is true than not true, then the claim has not been proved by the greater weight of the evidence.

The greater weight of the evidence does not necessarily mean the greater number of witnesses or the greater volume of testimony. Any believable evidence may be a sufficient basis to prove a fact.

NEGLIGENCE AND REASONABLE CARE— BASIC DEFINITION

Negligence is the failure to use reasonable care. Reasonable care is that care which a reasonable person would use under like circumstances. Negligence is the doing of something which a reasonable person would not do, or the failure to do something which a reasonable person would do, under like circumstances.

DIRECT CAUSE

A direct cause is a cause which had a substantial part in bringing about the injury, either immediately or through happenings which follow one after another.

SUPERSEDING CAUSE

However, a cause is not a direct cause when there is a superseding cause. For a cause to be a superseding cause it:

APPENDIX B: NEW, PLAIN LANGUAGE JURY INSTRUCTIONS

**PRELIMINARY INSTRUCTIONS—
BEFORE TRIAL**

Members of the jury:

You have now been sworn in.

Here are some basic rules about your job as a juror.

Your job will be to find what the facts are in this case by considering the evidence.

As judge I will apply the rules and tell you what you can and cannot consider as evidence.

What is evidence

1. Evidence is what witnesses say on the stand. This is called "testimony".
2. Evidence can be items like photographs and documents. These items are called exhibits.
3. There are also facts you must accept:
    a. Evidence can be facts that the attorneys agree on. This agreement is called a stipulation.
    b. There may also be facts that I tell you to accept.

What is not evidence

The following are not evidence:

1. Nothing the attorneys say during the trial, including opening statements and closing arguments, is evidence.
2. The attorneys' questions are not evidence. The witnesses' answers are.
3. Objections are not evidence. Attorneys may object if they think a question or answer is against the rules:
    a. I will sustain the objection if I think it is against the rules, and you should ignore this question or answer.
    b. If I overrule the objection, the question or answer is evidence like the rest of the witness's testimony.
4. You cannot consider anything you hear or learn about this case outside this courtroom.

You must follow the instructions on what you can consider as evidence.

Deciding the facts

Wait until you have heard all the evidence before you make up your mind.

Your best guide is your own good judgment, experience and common sense.

In addition ask yourself:

1. Is a witness being truthful?
2. Will a witness gain or lose if this case is decided a certain way?
3. How did a witness come by the facts? How well did he or she remember the facts?
4. Does he or she seem honest and sincere?
5. Is the witness's testimony reasonable compared with other evidence?

Duty of the Jury

You must decide the facts.

You and only you can decide the facts. Do not take anything I say or do as a sign of what the verdict should be.

Once the facts are decided, you must follow the law.

You must follow the law even if you don't agree with it.

How to act as a jury member

Now a few words about your conduct as jurors:

Do not let outsiders influence you.

Do not discuss this case with other jury members during the trial.

You will have plenty of time to do this at the end of the trial, once you have all the evidence.

If anyone tries to discuss this case with you outside the courtroom, report this to me.

Do not read or listen to news reports about the case.

Do not do your own investigations.

Keep an open mind until you have heard or seen all of the evidence.

Remember you cannot consider anything you hear or learn about this case outside this courtroom.

---------(POST-TRIAL INSTRUCTIONS)---------
DUTIES OF JUDGE AND JURY

I will give you your instructions.

The order in which I give the instructions is not important.

Consider all the instructions together.

You must apply the law in these instructions whether you agree with it or not.

You must follow all of the instructions. Do not single out some and ignore others--all of them are equally important.

Duties of the jury and the judge

You must decide what the facts are from the evidence you have heard and seen. You must apply the law to these facts. I will explain which laws apply.

The questions you have to decide are listed on the verdict form. I will order a judgment based on your answers to the questions and the law.

It is your exclusive duty to answer the questions on the verdict form. Do not take anything I do or say as a sign of what the answers should be.

Decide the case on the evidence

Decide the case on the evidence.

Base your decision only on the evidence you have seen or heard in this courtroom.

You must not let events outside the courtroom influence you.

Your most important duty: Be impartial

You cannot take sides based on personal likes, dislikes or prejudices.

You must not be concerned that a particular answer on the verdict form is favorable to one party or the other.

DELIBERATION AND RETURN OF VERDICT

Here are some instructions about your deliberations and return of the verdict.

Selection of a foreperson

When you return to the jury room to discuss this case, you must select a jury member to be foreperson. That person will lead your deliberations.

The jurors' duty to discuss the case

The goal of jury deliberations is to talk among yourselves in order to reach an agreement about the verdict.

This agreement must be consistent with your own judgment.

Each of you must decide the case for yourself, but do so only after you have fully considered the views of your fellow jurors.

Re-examine your own view and change your mind, if you decide your original view was mistaken.

But do not change your mind just because other jurors disagree, or simply because of pressure to return a verdict.

Kinds of verdict

Unanimous verdict

Your verdict must be unanimous, that is: all jurors must agree on all the answers.

The foreperson must date and sign the verdict form if your verdict is unanimous.

Divided verdict

If you cannot reach a unanimous verdict after six hours of deliberation, then five of you may return a verdict.

If you return a verdict that is not unanimous, the five jurors must agree to sign and date the jury form.

The same five jurors must agree on all the answers.

Juror's responsibility

You must not allow sympathy, prejudice, or emotion to influence your verdict.

The quality of your service will be reflected in the verdict you return to this court.

Your arrival at a just and proper verdict contributes to the administration of justice.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Direct and circumstantial evidence

A fact can be proved in one of two ways:

1. A fact is proved by direct evidence when that fact is proved directly without any inferences.

2. A fact is proved by circumstantial evidence when that fact can be inferred from other facts proved in the case.

For example, the fact that "a person walked in the snow" could be proved:

1. By an eyewitness who testified directly that he or she saw a person walking in the snow.

2. By circumstantial evidence of shoe-prints in the snow, from which it can be indirectly inferred that a person had walked in the snow.

Using direct and circumstantial evidence

You should consider both kinds of evidence. The law makes no distinction between the weight given to either direct or circumstantial evidence.

It is up to you to decide how much weight to give any kind of evidence.

IMPEACHMENT

You must decide what testimony to believe and how much weight to give it.

Guidelines for impeachment

1. You may consider what the witness did or said in the past, if it is not consistent with what he or she is saying now.

   If what was said in the past was not under oath, use it only to decide the truth or weight of what the witness is saying now.

   If it was under oath, or the witness is a party in this case, then use it to decide the issues in this case and the truth and weight of what the witness is saying now.

2. You may consider whether the witness has been convicted of a crime. You may consider whether the kind of crime makes it more likely that he or she is not telling the truth.

3. You may consider a witness's reputation for truthfulness.

BURDEN OF PROOF

Deciding the issues in a case

You will be asked to answer "yes' or "no" to some questions on the verdict form.

The greater weight of the evidence must support a "yes" answer.

This means that all of the evidence, regardless of which party produced it, must lead you to believe that the claim is more likely true than not true.

Greater weight of the evidence does not necessarily mean the greater number of witnesses or the greater volume of evidence.

Any believable evidence may be enough to prove that a claim is more likely true than not.

NEGLIGENCE AND REASONABLE CARE— BASIC DEFINITION

Definition of "reasonable care"

Reasonable care is the care a reasonable person would use in the same or similar circumstances.

Definition of "negligence"

Negligence is the failure to use reasonable care.

Ask yourself what a reasonable person would have done in these circumstances.

Negligence occurs when a person:

1. Does something a reasonable person would not do; or

2. Fails to do something a reasonable person would do.

DIRECT CAUSE

Definition of "direct cause"

A "direct cause" is a cause that had a substantial part in bringing about the injury.

SUPERSEDING CAUSE

Definition of "superseding cause"

However, a cause is not a direct cause when there is a superseding cause.

A cause is a superseding cause when four conditions are present:

1. It happened after the original negligence; and
2. It did not happen because of the original negligence; and
3. It changed the natural course of events and made the result different from what it would have been; and
4. The original wrongdoer could not have reasonably anticipated this event.

APPENDIX C: COMPREHENSION TEST

Subject number _____

INSTRUCTIONS

Circle the letter corresponding to the best answer. Answer each question based on the tape recorded instructions you just heard.
For short essay questions, use the back of the page if more space is needed. Please work through the questions in order. Do not return to a previous question and change an answer.

1. Assume you are serving on a six-person jury. How many jurors must vote in favor of the plaintiff in order to return a verdict in plaintiff's favor?

Answer: _____

2. Again, assume a six-person jury. How many jurors must vote in favor of the defendant in order to return a verdict in defendant's favor?

Answer: _____

3. In a jury trial, who decides fact issues? In other words, who decides what events actually occurred?

Answer: _____

4. In a jury trial, who decides which laws apply to the case?

Answer: _____

5. Bob is the defendant (a party) in a traffic accident case. Just after the accident occurred, Bob told the investigating officer that ne owned one of the vehicles involved. Now at trial, Bob testifies that he never owned the vehicle. His current testimony and his prior statement to police cannot be reconciled (in other words, they cannot both be true). The jury may consider Bob's statement to police for which of the following purpose(s)? (Circle all that apply.)

a. To decide fact issues in the trial.
b. To decide whether Bob's current testimony is believable.
c. To decide how much weight to give Bob's current testimony.
d. None of the above.

6. At a traffic accident trial, a witness testifies that she saw the defendant driving his car near the location of the accident five minutes prior to the accident. This testimony is direct evidence that:
a. Defendant was driving a car five minutes before the accident.
b. Defendant was driving a car at the time of the accident.
c. Defendant was responsible for the accident.
d. All of the above.

7. "Greater weight of the evidence" means:
a. More than half of the jurors agree that the claim is true.
b. The jurors have an obligation to weigh all the evidence presented.
c. The evidence as a whole convinces the jury that the claim is more likely true than false.
d. More witnesses or documents were presented at trial in favor of the claim than against it.

8. The attorneys have stipulated (agreed) to a particular fact. What is the effect of this stipulation?
a. The jury must accept that fact as evidence in the case.
b. The jury may accept that fact as evidence in the case.
c. The fact has been placed in dispute and both sides will present evidence about it.
d. The judge has ruled that the fact exists as a matter of law.

9. What are the most important instructions given by the judge?
a. The ones presented first.
b. The ones that best explain the evidence.
c. The ones describing what each party must prove.
d. All instructions are equally important.

10. In order to answer "yes" to a claim on the verdict form, the jury must believe that:
a. The claim is more likely true than not true.
b. The claim has been proved beyond a reasonable doubt.
c. No believable evidence was presented against the claim.
d. The plaintiff is entitled to receive money in the lawsuit.

11. During questioning of a witness, the other side's attorney makes an objection to the question. If the objection is sustained, the jury should:

a. Treat both the attorney's question and the witness' answer as evidence.
b. Treat the witness' answer as evidence, but not the attorney's question.
c. Disregard both the question and the answer.
d. Disregard the witness' entire testimony.

12. "Evidence" may consist of: (circle all that apply)
a. testimony of witnesses
b. exhibits
c. documents
d. closing arguments of attorneys
e. jury instructions given by the judge

13. Mark is testifying at trial. His testimony contradicts a prior unsworn statement he made before the trial began. Mark is not a party at this trial. The jury may consider Mark's prior statement for which purpose(s)? (Circle all that apply.)

a. To decide fact issues in the trial.
b. To decide whether Mark's current testimony is believable.
c. To decide how much weight to give Mark's current testimony.
d. None of the above.

14. You are a juror in a negligence trial. You believe both of the following facts:
1. A reasonable person would have acted differently than the defendant did.
2. The defendant believed he was being reasonable and careful.
Will you vote to find the defendant negligent?
a. Yes
b. No

15. In deciding whether a particular witness is believable, a juror may consider evidence presented by other witnesses.
a. True
b. False

16. Prior to the close (end) of evidence, a juror may discuss the case, but only with fellow jurors.
a. True
b. False

17. All statements of the witnesses, attorneys, and judge made during the trial are to be considered as evidence.

a. True
b. False

18. By law, direct evidence is more reliable and more important than circumstantial evidence.

a. True
b. False

19. If the jury decides that some of the judge's instructions do not apply to the case, they should ignore those instructions and obey the rest.

a. True
b. False

20. During the course of a trial, it is the civic duty of jurors to gather information about the case from news reports.

a. True
b. False

21. The jury must ignore any attempt to discredit a witness by showing bad reputation for truthfulness or honesty.

a. True
b. False

22. A cause is a superseding cause if it arises as a natural and foreseeable result of the original wrongdoing.

a. True
b. False

23. When answering questions on the verdict form, jurors should consider the effect that their answers will have on each party.

a. True
b. False

24. In deciding whether to believe a witness, the jury may consider that the witness has been convicted of a crime.

a. True
b. False

25. On a scale of 0 (absolutely sure that the claim is false) to 100 (absolutely sure that the claim is true), how convinced must a juror be in order to vote "yes" to a claim on the verdict form? (Assume that a score of 50 represents a "50/50"

split, with the evidence for the claim being equal to the evidence against the claim.)

Answer: _____

26. Under what circumstances may a verdict be non-unanimous (that is, not all jurors agree)?

Answer: _____

_____

_____

27. What is "direct evidence"?

Answer: _____

_____

_____

_____

_____

28. What is "circumstantial evidence"?

Answer: _____

_____

_____

_____

_____

APPENDIX D: DEMOGRAPHIC QUESTIONNAIRE

Subject number _____

Jury Instruction Study
Demographic Questionnaire

Please provide the following information about yourself. List or circle the correct answer.

1. Age: _____

2. Sex: Male Female

3. Year in school:

Freshman Sophomore Junior Senior Grad/Prof. Other

4. Have you decided on a college major? Yes No

If so, what is it? _____

If you have a minor, what is it? _____

5. Please list any jobs you hold or have held in the past. If you have had many jobs, please list the most significant ones. Be sure to include any law-related jobs, such as working in a lawyer's office.

_____

_____

6. What is your native language? _____

7. Have you received any legal training (on-the-job, school coursework, etc.)? Yes No

If so, please describe the training you received. List any school courses you have taken that relate to the law.

_____

_____

8. Have you ever served on a jury? Yes No

If so, please indicate whether the case(s) were civil or criminal, and briefly describe each case. If you served as foreperson, please indicate so.

_____

_____

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